In the High Court of Judicature at Madras

Dated: 14/08/2003

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The Honourable Mr.Justice P.K.MISRA

Writ Petition No.13988 of 1997
and
W.M.P.No.22459 of 1997

1.R.V.Swaminathan
2.Tamil Nadu Electricity Board
Finance and Accounts Officers
Association (Regn.S.No.81 of 1969)
rep. by its General Secretary
Chennai.2. ..... Petitioners

-Vs-

1. The Tamil Nadu Electricity Board
by its Chairman
800 Annasalai, Chennai.2.
2. The Chief Engineer/Personnel
Tamil Nadu Electricity Board
800, Annasalai, Chennai.2.
3. G.RAjagopal
4. Gunasekaran
5. Arulsamy
6. Sarojini Ganga
7. S.Maheswaran
8. S.Murugan
9. S.Maheswari Bai
10. M.Manoharan
11. R.Jarad Kishore
12. K.Sundaravaradhan
13. K.Govindan
14. V.Umamageswari ..... Respondents

Petition filed under Article 226 of the Constitution of India
for issue of a writ of Certiorarified Mandamus as stated therein.

For petitioners : Mr.N.G.R.Prasad
for M/s. Row & Reddy

For respondents : Mr.V.Radhakrishnan for TNEB
Mr.Balan Haridas

for R5,R8,R9,R10,R13 & R14.

:O R D E R

The first petitioner is an employee under the Tamilnadu Electricity Board. At the time of filing of the writ petition he WAS employed as Accounts Officer having been promoted to the said post in January 1 996. The petitioner No.2 is Tamil Nadu Electricity Board Finance and Accounts Officers Association. The writ petition has been filed for issuance of a writ of Certiorarified Mandamus for quashing the Ref.No.011366/136/R1-3/97 dated 29.08.1997 promoting the respondents 3 to 14 as Deputy Financial Controller.

2. Under the Tamil Nadu Electricity Board Service Regulations, under Division VI for Category 4, the post of Deputy Financial Controller are filled up by promotion from Accounts Officer Category 1 Division VIII in Class II if suitable candidates are not available for promotion by direct recruitment.

3. In the present case, the first petitioner was promoted as Accounts Officer in January 1996. Many of such officers are also working as Accounts Officer. Such persons would have become eligible for being promoted as Deputy Financial Controller after completion of two years of service as Accounts Officer.

4. It is the case of the petitioners that instead of waiting for the first petitioner and other such officer to complete two years of service, the Board issued advertisement for appointment of Deputy Financial Controller through direct recruitment. It is the submission of the petitioners that the Board should have relaxed the condition with a view to promote the Accounts Officer and even though such request had been made, the Board did not pay any heed to such request. It is further submitted that respondents 3 to 14 who have been directly deputed as Deputy Financial Controller, did not have the requisite qualification for being directly appointed as Deputy Financial Controller. It has been asserted that though such persons had the requisite educational qualification, as per condition No.(c), they have not held responsible "executive charges" for a period of five years as contemplated in condition (c).

5. For the sake of convenience, the relevant condition is extracted hereunder:

"(C) Must have held responsible executive charge, involving considerable scope for initiate independent judgment and unreviewed action of Accounting and Commercial Management of a large industrial or public utility concern, with considerable maintenance, repair and construction activities and stores preferably in a State or provide electric supply or public utility concern, for a period of not less than rive years and be capable for supervision and

management of cost accounts, budgets and commercial organization of a large undertaking with 2000 accounts staff and officers, handling modern office equipment and machines in accounting and statistics work".

On the basis of such allegations, the petitioners have prayed for quashing the order relating to appointment of such respondents 3 to 14.

6. Counter affidavit has been filed on behalf of the Board, namely, respondents 1 and 2 and on behalf of some of the respondents. In the counter filed on behalf of the Board, it has been indicated that the post of Deputy Financial Controller can be filled up either through promotion or through direct recruitment and where suitable eligible candidates are not available for promotion, appointment can be made through direct recruitment. Since the posts were lying vacant and it was necessary to fill up the posts and since eligible candidates for promotion were not available, the Board took a decision to fill up the posts through direct recruitment. The allegation to the effect that the Board should have relaxed the condition for giving promotion to the Accounts Oficer has been disputed by stating that the Board found it fit in the interest of proper administration to go in for direct recruitment which is permissible under the regulation. The allegation that the selected candidates did not have the necessary work experience, has been denied.

7. Similar counter affidavit has been filed on behalf of respondents 5,8,9,10,13 and 14. It is also stated by these respondents that at the time when the posts were filled up by direct recruitment, the first petitioner and other similarly placed persons, were not eligible for being promoted and, therefore, they do not have any locus standi to challenge the appointment by such direct recruitments. Learned counsel relying upon the

decision reported in 1993 (4) SCC 119 (R.K. Jain v. Union of India)has submitted that third party not being a candidate and not appointed, has no locus standi to challenge the appointment.

8. In order to satisfy myself about the condition relating to experience, I had called upon the counsel appearing for the Board to produce the relevant file and on going through those papers, I find that possibly some of the candidates selected did not have the quality of experience as required. However, since the persons were selected through duly constituted selection committee and hence, it cannot be proper for the High Court to substitute its own judgment for that of the selection committee. The regulations contemplate appointment to the posts of Deputy Financial Controller through promotion and in the absence of suitable candidates through direct recruitment. There is no dispute that the first petitioner and other Accounts Officers were ineligible to be promoted at that stage as they had not served for two years as Accounts Officers, which was a condition precedent. Since eligible candidates were not available, it was open to the Board to fill up the posts through direct recruitment. The petitioners cannot said to be aggrieved by such decision of the Board to fill up the posts through direct recruitment as it cannot be said that they had any vested right of being promoted nor it can be said that the

Board was obliged to wait for the period of two years so that the Accounts Officer would become eligible for being promoted. The Board's decision to fill up posts by direct recruitment cannot be faulted.

9. The next question is relating to eligibility of the candidates selected. As already indicated, though some misgivings can be expressed regarding the quality of experience of some of the candidates, the matter was essentially to be decided by the Selection Committee and the High Court cannot substitute its own judgment as it does not sit as an appellate authority in such matters. Moreover in the mean time, such persons have gained the valuable experience by working continuously under the Board and at this stage it may not be proper to remove such persons. It has to be remembered that the present writ petition is not a public interest litigation, and, therefore, the matter has to be decided on the basis of the right if any of the petitioners and since the first petitioner and other similarly placed accounts officer were not eligible and since regulation permit the appointment through direct recruitment in the absence of suitable officers for promotion, I do not think it proper to interfere in the matter. The writ petition is accordingly dismissed.

In result, the writ petition is dismissed. No cost.
Connected W. M.P. is also dismissed.

Index : Yes
Internet : Yes

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To
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by its Chairman
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